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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CESAR AGUILAR, JR.; CARMEN
BRAVO; and DAYANA RICO DE PAZ,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;
UNITED STATES POSTAL SERVICE

Defendants.

Case No.:

COMPLAINT FOR NEGLIGENCE
CAUSING PERSONAL INJURY
(FEDERAL TORT CLAIMS ACT)

COME NOW Plaintiffs Cesar Aguilar, Jr.; Carmen Bravo; and Dayana Rico de Paz, and complain as follows:

JURISDICTION AND VENUE

1. This action is brought under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, against the United States of America, which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Courts.

2. Venue is proper in the Northern District of California under 28 U.S.C. §

1 1391(e)(1).

2 **NATURE OF THE ACTION**

3 3. On December 9, 2019, Plaintiffs Cesar Aguilar, Jr.; Carmen Bravo; and
 4 Dayana Rico de Paz were travelling northbound in Ms. Bravo's car on Highway 101 in
 5 Humboldt County, California. Ms. Bravo was driving, Mr. Aguilar and Ms. Rico de Paz
 6 were passengers. United States Postal Service (USPS) employee Morgan Smiley, in the
 7 course and scope of his employment, was driving a USPS vehicle westbound on the
 8 Indianola Cutoff, approaching the northbound lanes of Highway 101. Mr. Smiley drove
 9 through a stop sign and caused a collision with Ms. Bravo's vehicle. Ms. Bravo, Mr.
 10 Aguilar, and Ms. Rico de Paz were all physically injured. The responding California
 11 Highway Patrol officer determined Mr. Smiley was at fault, as confirmed by three
 12 uninvolved independent witnesses.

13 **PARTIES**

14
 15 4. Cesar Aguilar, Jr. is a natural person who resides in Humboldt County,
 16 California.

17 5. Carmen Bravo is a natural person who resides in Humboldt County,
 18 California.

19 6. Dayana Rico de Paz is a natural person who resides in Humboldt County,
 20 California.

21 7. Morgan Smiley is or was an employee of USPS, an independent agency of
 22 the executive branch of the United States federal government. At the time of the events
 23 complained of herein, he was acting in the course and scope of his employment as a
 24 federal employee.

25 **STATUTORY BASIS OF LIABILITY AGAINST THE UNITED STATES OF**
 26 **AMERICA**

27 8. This case is brought against the United States of America under 28 U.S.C. §
 28 2671 *et seq.*, commonly referred to as the "Federal Tort Claims Act" (hereinafter

1 “FTCA”). The United States is liable under 28 U.S.C. §§ 1346(b)(1) and 2674 because
 2 the personal injuries and resulting damages that form the basis of this complaint were
 3 proximately caused by the negligence, wrongful acts and/or omissions of the employees
 4 of the United States of America through its agency, the United States Postal Service.
 5 These employees were acting in the course and scope of their office or employment,
 6 under circumstances where the United States of America, if a private person, would be
 7 liable to the Plaintiffs in the same manner and to the same extent as a private individual
 8 under the laws of the State of California.

9
 10 9. Under 28 U.S.C. § 2675, each of the three Plaintiffs, Cesar Aguilar, Jr.;
 11 Carmen Bravo; and Dayana Rico de Paz each submitted a claim to the appropriate agency
 12 of the United States, the United States Postal Service, each of which was marked received
 13 on August 16, 2021. The United States failed to respond, and therefore on February 16,
 14 2022, the claims were deemed denied by operation of law.

15 **FIRST CAUSE OF ACTION: NEGLIGENCE (FTCA)**

16 10. Plaintiffs incorporate by reference each and every prior and subsequent
 17 allegation as though fully set forth herein.

18 11. Morgan Smiley was negligent in the operation of the USPS truck he was
 19 driving when he collided with the Plaintiffs by failing to stop at a stop sign and entering
 20 the northbound lane of Highway 101 while traffic was oncoming.

21 12. Mr. Smiley’s negligence was a substantial factor in causing harm to each of
 22 the three Plaintiffs.

23 13. As a result of the harm caused by Mr. Smiley’s negligence, the Plaintiffs,
 24 and each of them, suffered physical injuries.

25 14. Cesar Aguilar, Jr. suffered scalp lacerations, a cardiac contusion, a sternum
 26 fracture and associated hematoma, rib and skull fractures, lacerations to his ear, a
 27 degloving right hand injury, and permanent disfiguring scarring as a result of the
 28 collision.

1 15. Carmen Bravo suffered a concussion, lacerations to her hand, abrasions to
2 her cheek and forehead, left shoulder pain, and anxiety and significant emotional distress
3 relating to driving and riding in vehicles as a result of the collision.

4 16. Dayana Rico de Paz suffered chest pain, shoulder pain, lacerations to her
5 knee, strain to her cervical spine, and anxiety and significant emotional distress related to
6 driving and riding in vehicles as a result of the collision.

7 17. Mr. Smiley was employed by USPS and was acting in the course and scope
8 of his employment or agency at the time of the collision. Private employers are
9 vicariously liable for the torts committed by their employees while in the course and
10 scope of their employment under California law; therefore, under the FTCA, the United
11 States is liable for the negligence of its employee as a similarly situated private person.

12 **PRAYER FOR RELIEF**

13 WHEREFORE Plaintiffs pray for relief against the Defendants as follows:

- 14 1. For past and future lost wages according to proof;
15 2. For past and future medical expenses according to proof;
16 3. For general damages according to proof;
17 4. For pre-judgment and post-judgment interest as allowed by law;
18 5. For costs of suit incurred herein; and
19 6. For such other and further relief as this Court may deem just and proper.
20

21
22 Dated: February 17, 2022

JANSSEN MALLOY LLP

23
24 By: 

25 William H. Stein
26 Michael J. Crowley
27 Attorney for Plaintiffs
28 Cesar Aguilar, Jr.;
Carmen Bravo; and
Dayana Rico de Paz